

# Boycott calls and double standards: another French limitation on freedom of expression

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France, once the motherland of human rights, is increasingly clamping down on freedom of expression. According to a recent decision by the French Supreme Court, calling for boycott on Israeli goods [is illegal under french law](#). Fourteen members of the activist group [Boycott, Divestment & Sanctions \(BDS\)](#), campaigning for the economic, academic, sports and cultural boycott of Israel, learned it the hard way in two decisions of October 20th which confirmed on the highest level of criminal jurisdiction their conviction to 12,000 € in damages and 1,000 € in fine. Joining Israel, France makes for the only european country to penalize boycott calls on products of Israeli origin.

As the case law currently stands, this new ruling isn't much of a surprise. The Cour de cassation gets in line with a ministerial circular of February 2010, which advises the Prosecution to «respond firmly» to boycott calls regarding Israel. Still, contradictory precedents, like the [Zémor ruling](#) of 2013 or the [Khimoun decision](#) of 2012, had kept the issue unclear. In validating the conviction of BDS members for leafletting in a shopping mall, the Criminal Chamber settles to preserve the rights of Israeli manufacturers at the expense of political freedom of expression.

On what ground ?

The Court relies on an [1881 Loi sur la presse](#), set to protect individuals against «provocation to discrimination, hate or violence toward a person or a group of people over their origin or their belonging or not belonging to an ethnic group, a nation, a race or a particular religion». Balancing it with the freedom of expression, both a [constitutional](#) and a [European human right](#), the judges rule that « positive action of rejection » forms an exception to articles 7 and 10 of the Convention, and thus constitutes a crime under the above-cited Loi sur la presse.

The french highest Criminal Court looks rather outdated in this decision. It appears to be oblivious to the fact that hitting the economy has been an indispensable move of individual political protest for quite some time. In its view, politics seems to be reserved to states, and the only legal way to call for boycott in France is an official state-ordered embargo. Governments can discriminate at will, whereas citizens are supposed to scrupulously abide by the so-called necessities of a democratic society.

Discrimination is indeed at the core of this affair, but not just for the reasons the Court puts forth. The discomfort behind this ruling results from the unequal treatment of boycott advocates depending upon the nations they target. South Africa during Apartheid was a prominent target of boycott calls which at the time were not only permitted but encouraged. No one thought to prosecute the campaigns against «made in China» labels. Neither the courts nor the government declared the discrimination of Mexican goods to support [Florence Cassez](#) illegal with regards to the Act of 1881. Why the BDS campaign requires a different stance remains unclear from the reasoning of the court.

Does the European Court of Human Rights have a say ?

In 2009 the Strasbourg Court validated the sentence of a french mayor in a similar affair ([ECHR 16.07.2009 Willem v France](#)). In that case, the european court of last resort with regards to human rights however justified its decision on the ground that, as a public official, a mayor « ought to keep a certain neutrality » and respect « a duty of reserve ». For BDS members to call for boycott while making use of their own right to freedom of expression is a whole different ballgame. With that in mind, the Court could very well find France to be once again in violation of a human right.

SUGGESTED CITATION Guenfoud, Ibtissem: *Boycott calls and double standards: another French limitation on freedom of expression*, *VerfBlog*, 2015/11/08, <http://verfassungsblog.de/boycott-calls-and-double-standards-another-french-limitation-of-freedom-of-expression/>.

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